

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

In Re:)
)
417 Rentals, LLC,) Bankruptcy No. 17-60935-abf11
)
Debtor.)

MOTION FOR ADEQUATE PROTECTION

COMES NOW, Creditor Old Missouri Bank (hereinafter “Bank”), a secured creditor and party in interest in the above-styled case, and moves the Court for an Order conditioning use of the Real Property, as defined below, and compelling Debtor to make payments to Bank as necessary to provide Bank with adequate protection, and, in support thereof, states to the Court the following:

1. An order for relief under Chapter 11 of the United States Bankruptcy Code was entered on behalf of Debtor 417 Rentals, LLC (“Debtor”) on August 25, 2017. Debtor has remained in possession of its real and personal property since said date.
2. The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 157, and this is a core proceeding dealing with property of the estate.
3. Bank is the holder of a promissory note, executed on or about January 17, 2014 by Chris Gately, as member, on behalf of Debtor, for value received, in the original principal amount of \$591,000.00 payable to Bank (“Note 9512”). Debtor promised to repay the principal amount of \$591,000.00 together with interest at the rate of 4.690% through monthly payments of \$3,821.48 per month with Note 9512 maturing on January 17, 2019. A true and accurate copy of Note 9512 is attached hereto as **Exhibit A** and incorporated herein by reference.

4. Note 9512 was secured by a future advance and future obligation deed of trust dated January 17, 2014 (hereinafter the “9512 Deed of Trust”) pledging certain real estate in Greene County and Stone County, Missouri legally described in the 9512 Deed of Trust and including the following fifteen rental properties, commonly known as:

- a. 2644 W Lombard St, Springfield, MO 65802;
- b. 3020 W Elm St, Springfield, MO 65802;
- c. 130 S Walnut Ave, Republic, MO 65738;
- d. 10945 N Farm Road 115, Willard, MO 65781;
- e. 2035 N Pickwick Ave, Springfield, MO 65803;
- f. 944 S New Ave, Springfield, MO 65806;
- g. 818 W Scott St, Springfield, MO 65802;
- h. 829 N Farmer Ave, Springfield, MO 65802;
- i. 1150 S Crutcher Ave, Springfield, MO 65804;
- j. 1876 N Broadway Ave, Springfield, MO 65803;
- k. 2006 N. Pickwick Ave, Springfield, MO 65803;
- l. 627 N Hillcrest Ave, Springfield, MO 65802;
- m. 403 Somerset St, Shell Knob, MO 65747;
- n. 434 W Evergreen St, Springfield, MO 65803; and
- o. 2564 W Phelps St, Springfield, MO 65802.

The 9512 Deed of Trust also contains an assignment of rents and leases. The 9512 Deed of Trust was recorded on January 21, 2014 with the Greene County Recorder of Deeds Office in Book 2014 Page 002299-14 and with the Stone County Recorder of Deeds Office as Instrument Number 201400001135. A true and accurate copy of the 9512 Deed of Trust is attached hereto as **Exhibit B** and incorporated herein by reference.

5. Bank is the holder of a promissory note, executed on or about September 25, 2013 by Chris Gatley, as member, on behalf of Debtor, for value received, in the original principal amount of \$526,500.00 payable to Bank (“Note 9452”). Debtor promised to repay the principal amount of \$526,500.00 together with interest at the rate of 4.690% through monthly payments of \$3,404.53 per month with Note 9452 maturing on September 25, 2018. A true and accurate copy of Note 9452 is attached hereto as **Exhibit C** and incorporated herein by reference.

6. Note 9452 was secured by a future advance and future obligation deed of trust dated September 25, 2013 (hereinafter the “9452 Deed of Trust”) pledging certain real estate in Greene County, Missouri legally described in the 9452 Deed of Trust and including the following ten rental properties, commonly known as:

- a. 1731 W Walnut St, Springfield, MO 65806;
- b. 208 E Brooks, Republic, MO 65738;
- c. 1683 E Dale St, Springfield, MO 65803;
- d. 1803 E Crestview St, Springfield, MO 65804;
- e. 816 S New Ave, Springfield, MO 65806;
- f. 2020 N Ramsey Ave, Springfield, MO 65803;
- g. 1331 N Brown Ave, Springfield, MO 65802;
- h. 1637 W Florida St, Springfield, MO 65803;
- i. 637 S Miller Rd, Springfield, MO 65802; and
- j. 1022-1024 S Lexington Ave, Springfield, MO 65802.

The 9452 Deed of Trust also contains an assignment of rents and leases. The 9452 Deed of Trust was recorded on September 26, 2013 with the Greene County Recorder of Deeds Office in Book 2013 Page 043767-13. A true and accurate copy of the 9452 Deed of Trust is attached hereto as **Exhibit D** and incorporated herein by reference.

7. Bank is the holder of a promissory note, executed on or about October 10, 2014 by Chris Gatley, as member, on behalf of Debtor, for value received, in the original principal amount of \$427,500.00 payable to Bank (“Note 0121”). Debtor promised to repay the principal amount of \$427,500.00 together with interest at the rate of 4.690% through monthly payments of \$2,764.61 per month with Note 0121 maturing on October 10, 2019. A true and accurate copy of Note 0121 is attached hereto as **Exhibit E** and incorporated herein by reference.

8. Note 0121 was secured by a future advance and future obligation deed of trust dated October 10, 2014 (hereinafter the “0121 Deed of Trust”) pledging certain real estate in Greene County, Missouri legally described in the 0121 Deed of Trust and including the following ten rental properties, commonly known as:

- a. 2105 N Albertha Ave, Springfield, MO 65803;
- b. 1636 W Thoman St, Springfield, MO 65803;
- c. 626 N Phelps Ave, Republic, MO 65738;
- d. 1112 N Weller Ave, Springfield, MO 65803;
- e. 2058 N Grace Ave, Springfield, MO 65803;
- f. 1253 S Brite Ave, Springfield, MO 65807;
- g. 1037 N Brown Ave, Springfield, MO 65802;
- h. 2224 N Weller Ave, Springfield, MO 65803;
- i. 1607 W Nichols St, Springfield, MO 65802; and
- j. 7033 W Farm Road 106, Springfield, MO 65803.

The 0121 Deed of Trust also contains an assignment of rents and leases. The 0121 Deed of Trust was recorded on October 14, 2014 with the Greene County Recorder of Deeds Office in Book 2014 Page 036063-14. A true and accurate copy of the 0121 Deed of Trust is attached hereto as **Exhibit F** and incorporated herein by reference.

9. Bank is the holder of a promissory note, executed on or about August 18, 2016 by Chris Gatley, as member, on behalf of Debtor, for value received, in the original principal amount of \$23,507.83 payable to Bank (“Note 2628”). Debtor promised to repay the principal amount of \$23,507.83 together with interest at the rate of 6.000% through monthly payments of \$181.99 per month with Note 2628 maturing on February 18, 2019. A true and accurate copy of Note 2628 is attached hereto as **Exhibit G** and incorporated herein by reference.

10. Note 2628 was secured by a future advance and future obligation deed of trust dated August 18, 2016 (hereinafter the “2628 Deed of Trust”) pledging certain real estate in Christian County, Missouri legally described in the 2628 Deed of Trust and commonly known as: 314 Gladiola Lane, Clever, MO 65631. The 2628 Deed of Trust also contains an assignment of rents and leases. The 2628 Deed of Trust was recorded on August 29, 2016 with the Christian County Recorder of Deeds Office in Book 2016 Page 11227. A true and accurate copy of the 2628 Deed of Trust is attached hereto as **Exhibit H** and incorporated herein by reference.

11. The real property described in **Exhibits B, D, F, and H** is hereinafter collectively referred to as the “Real Property” and consists of thirty-six parcels used by the Debtor as income generating rental properties.

12. Debtor defaulted on payments due under Notes 9452 and 0121 prior to the filing of its petition in this case. The amount necessary to cure the default on Note 9452, as of the date of filing, was \$5,799.16. The amount necessary to cure the default on Note 0121, as of the date of filing, was \$19,785.05.

13. As of the date of the filing of the petition, the balance due and owing with respect to the Notes was as follows:

- a. \$535,351.06 due and owing on Note 9512;
- b. \$465,368.12 due and owing on Note 9452;

- c. \$407,308.57 due and owing on Note 0121; and
- d. \$22,655.50 due and owing on Note 2628.

14. Debtor is continuing to use the Real Property and such use results in the depreciation of the value of the property.

15. Debtor is also receiving rental income from the use of the Real Property, which should exceed the amounts necessary to service the debts owed to Bank pursuant to the terms of Notes described herein.

16. In its proofs of claim, Bank estimates that the tracts that make up the Real Property are worth a combined value of approximately \$1,560,000.00. However, Bank asserts that the value of the Real Property is not substantially greater than the amount of the debt on the Notes, as of the date of filing.

17. Due to the mere passage of time during the pendency of this proceeding, it is necessary to maintain the equilibrium between the value of the Real Property and the amount of the debt. The payment of adequate protection by Debtor to Bank is necessary in order to maintain any equity in the collateral so that it does not decrease and diminish Bank's secured status. The payment of adequate protection periodic payments to the Bank will maintain the secured position with respect to the debt.

18. Bank does not have, nor has it been offered, adequate protection for its interest in the Real Property.

19. If Bank is not permitted to receive adequate protection payments, it will suffer irreparable loss and damage.

20. Bank is entitled to adequate protection and requests an Order of the Court conditioning the Debtor's use of the Real Property and for Debtor to make adequate protection payments to Bank to protect and maintain Bank's interest in the collateral.

WHEREFORE, Bank prays that the Court enter an Order conditioning use of the Real Property and compelling Debtor to make payments to Bank as necessary to provide Bank with adequate protection, and for such other and further relief as the Court deems just in the premises.

LOWTHER JOHNSON, LLC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by electronic notice or by United States Mail, First Class postage prepaid, this 26th day of September, 2017, to:

Debtors' Counsel

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/s/ Lee J. Viorel

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